

AMENDED IN ASSEMBLY JUNE 24, 2014

AMENDED IN ASSEMBLY JUNE 12, 2014

AMENDED IN SENATE JANUARY 17, 2014

AMENDED IN SENATE JANUARY 6, 2014

SENATE BILL

No. 812

Introduced by Senator De León

February 22, 2013

An act to amend Sections 25178, 25200, and 25200.1 of, to add Sections 25196.7, 25200.20, 25200.21, and 25200.22 to, and to add Article 8.8 (commencing with Section 25199.20) to Chapter 6.5 of Division 20 of, the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 812, as amended, De León. Hazardous waste.

(1) Existing law requires ~~the~~ facilities handling hazardous waste to obtain a permit from the Department of Toxic Substances Control. Existing law requires an owner or operator of ~~the~~ a facility intending to renew the facility's permit to submit a complete Part A application for a permit renewal prior to the expiration of the permit. Existing law requires the owner or operator to submit a complete Part B application when requested by the department. Existing law requires the department to issue a permit if the facility meets specified requirements.

This bill would instead require the owner or operator of a facility to submit complete Part A and Part B applications for a permit renewal at least 2 years prior to the expiration date of the permit. The bill would require the department to ~~approve or deny the~~ *issue a final permit decision for an* application for permit renewal within 36 months of the expiration of the facility's permit. The bill would deem an application

for permit renewal be denied if the department fails to ~~approve or deny~~ *issue a final permit decision for* the application within that time period. The bill would require the department, on or before January 1, 2016, to adopt regulations requiring financial bonds or other security for a hazardous waste facility, and establishing additional specified criteria to be used by the department in its permitting decisions.

(2) Existing law authorizes a hazardous waste facility in existence on a specified date or on the effective date of any statute or regulation that subjects the facility to the hazardous waste permitting requirements to continue to operate under a grant of interim status pending the review and decision of the department on the permit application.

This bill would provide that interim status granted on or after January 1, 2015, terminates 5 years from the date the interim status is granted or on the date the department ~~took~~ *takes* final action on the application for a permit, whichever is earlier.

(3) Existing law requires the department, on or before January 1 of each odd-numbered year, to post on its Internet Web site specified information.

This bill would add certain information that would need to be posted and would require that the information be translated into Spanish.

(4) Existing law authorizes the department to take enforcement actions for alleged violations of any law or regulations regulating hazardous waste.

This bill would require the department, as part of any enforcement action alleging a release of hazardous waste in violation of law, to contract with an independent 3rd party to conduct required testing to verify that the release of the hazardous waste has been abated and the site remediated.

(5) This bill would establish the Bureau of Internal Affairs within the department to investigate any complaint alleging departmental misconduct. The bill would further require the bureau to review policies, practices, and procedures of the department upon the request of the Governor, the Senate Committee on Rules, or the Speaker of the Assembly. The bill would establish the DTSC Citizen Oversight Committee within the department and require the committee to perform various duties, including, among other things, receiving complaints alleging departmental misconduct and referring allegations of departmental misconduct to the bureau, to the Criminal Investigation Division of the California Environmental Protection Agency, or to another entity, as appropriate.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) The mission of the Department of Toxic Substances Control,
4 as noted in its mission statement, is “to protect California’s people
5 and environment from harmful effects of toxic substances through
6 the restoration of contaminated resources, enforcement, regulation
7 and pollution prevention.”

8 (2) In an effort to protect the public health and minimize
9 environmental impacts, the state requires that each hazardous waste
10 management facility that treats, stores, handles, or disposes of
11 hazardous waste obtain a permit or other authorization from the
12 department.

13 (3) Currently, the department regulates 117 facilities across the
14 state that store, treat, or dispose of hazardous waste. Of these
15 facilities, nearly a quarter are operating on permits whose original
16 expiration dates have passed.

17 (4) One facility operated by Exide Technologies in Vernon,
18 California has been allowed to operate on an interim permit for
19 over 30 years, regardless of its repeated violations of environmental
20 and public health standards.

21 (5) Unfortunately, many communities continue to suffer with
22 toxic emissions and releases with limited protection from our
23 current hazardous waste management regulatory system.

24 (6) The longstanding problems at the Exide Technologies facility
25 are only the most recent examples of the system’s failures.

26 (b) It is the intent of the Legislature to strengthen our hazardous
27 waste management regulatory system to better protect vulnerable
28 communities and residents from toxic pollution by addressing
29 loopholes in the permitting system.

30 SEC. 2. Section 25178 of the Health and Safety Code is
31 amended to read:

32 25178. On or before January 1 of each odd-numbered year, the
33 department shall post on its Internet Web site and translate into
34 Spanish, at a minimum, all of the following:

1 (a) The status of the regulatory and program developments
2 required pursuant to legislative mandates.

3 (b) The status of the hazardous waste facilities permit program
4 that shall include all of the following information:

5 (1) Complete copies of the final hazardous waste facilities permit
6 applications received.

7 (2) A searchable list and map of final hazardous waste facilities
8 permits issued to date.

9 (3) A searchable list and map of final hazardous waste facilities
10 permits yet to be issued.

11 (4) A complete description of the reasons why the final
12 hazardous waste facilities permits yet to be issued have not been
13 issued, including the department's evaluation and findings of each
14 of the criteria listed in Section 25200.21 and its regulations as well
15 as any other criteria used by the department to evaluate the permit
16 application.

17 (5) A complete description of the findings supporting each final
18 hazardous waste facility permit granted by the department,
19 including the department's evaluation and findings of each of the
20 criteria listed in Section 25200.21 and its regulations as well as
21 any other criteria used by the department to evaluate the permit
22 application.

23 (c) The status of the hazardous waste facilities siting program.

24 (d) The status of the hazardous waste abandoned sites program.

25 (e) A searchable list and map of enforcement actions taken by
26 the department pursuant to this chapter and any other actions
27 relating to hazardous waste management. The list and map shall
28 specify whether the violations have been corrected and include
29 links to inspection reports, final orders, and enforcement actions
30 taken by other agencies.

31 (f) Data and summaries for each permitted site regarding annual
32 quantities and types of hazardous waste generated, transported,
33 treated, stored, and disposed.

34 (g) Statewide data and summaries on annual quantities and types
35 of hazardous waste generated, transported, treated, stored, and
36 disposed.

37 (h) Data and summaries regarding onsite and offsite disposition
38 of hazardous waste.

39 (i) Research activity initiated by the department.

1 (j) Regulatory action by other agencies relating to hazardous
2 waste management.

3 (k) A revised listing of recyclable materials showing any
4 additions or deletions to the list prepared pursuant to Section 25175
5 that have occurred since the last report.

6 (l) Any other data considered pertinent by the department to
7 hazardous waste management.

8 (m) The information specified in subdivision (c) of Section
9 25161, paragraph (4) of subdivision (a) of Section 25197.1,
10 subdivision (c) of Section 25354, and Sections 25334.7, and
11 25356.5.

12 (n) A status report on the cleanup of the McColl Hazardous
13 Waste Disposal Site in Orange County.

14 SEC. 3. Section 25196.7 is added to the Health and Safety
15 Code, to read:

16 25196.7. As part of an enforcement action alleging a release
17 of hazardous waste in violation of this chapter taken by the
18 department, the department shall contract with an independent
19 third party to conduct any required testing to verify that the alleged
20 violation of this chapter has been abated and the site has been
21 remediated.

22 SEC. 4. Article 8.8 (commencing with Section 25199.20) is
23 added to Chapter 6.5 of Division 20 of the Health and Safety Code,
24 to read:

25
26 Article 8.8. Bureau of Internal Affairs
27

28 25199.20. (a) The Legislature finds and declares that there
29 exists a need for a Bureau of Internal Affairs with appropriately
30 trained personnel, who will perform their duties with honesty and
31 credibility and without conflicts of interest to oversee the
32 department.

33 (b) For the purposes of this article, “bureau” means the Bureau
34 of Internal Affairs established pursuant to subdivision (c).

35 (c) There is hereby established an independent Bureau of
36 Internal Affairs within the department to do all of the following:

37 (1) Determine when allegations of misconduct within the
38 department warrant an internal affairs investigation.

39 (2) Conduct complete, objective, and independent investigations
40 of alleged departmental misconduct.

1 (3) Complete all investigations in a timely and thorough manner.
2 (4) Report any and all findings to the department and to the
3 DTSC Citizen Oversight Committee established pursuant to Section
4 25199.21.

5 (d) To meet the objectives of this section, all of the following
6 shall occur:

7 (1) Before training any peace officer, who is selected to conduct
8 internal affairs investigations, the California Environmental
9 Protection Agency shall conduct a complete and thorough
10 background check of the peace officer. The background check
11 shall be in addition to the background screening required when
12 the person was hired as a peace officer. Each peace officer shall
13 satisfactorily pass the background check required by this paragraph
14 before his or her appointment to conduct internal investigations
15 pursuant to this section. A person who has been a subject of a
16 sustained, serious disciplinary action, including, but not limited
17 to, termination, suspension, or demotion, shall not pass the
18 background check.

19 (2) All internal affairs allegations or complaints, whether
20 investigated or not, shall be logged and numbered sequentially on
21 an annual basis. The log shall specify, but not be limited to, the
22 following information:

23 (A) The sequential number of the allegation or complaint.

24 (B) The date of receipt of the allegation or complaint.

25 (C) The location of the facility to which the allegation or
26 complaint pertains.

27 (D) The disposition of all actions taken, including any final
28 actions taken.

29 (3) The log established pursuant to paragraph (2) shall be made
30 available to the DTSC Citizen Oversight Committee and posted
31 on the department's Internet Web site.

32 (4) The department shall not direct or influence, or attempt to
33 direct or influence, the investigation or the operations of the bureau.

34 (e) Consistent with the purposes of this section, the investigators
35 within the bureau shall conduct investigations and inquiries in a
36 manner that provides a complete and thorough presentation of the
37 facts regarding the allegation or complaint. All extenuating and
38 mitigating facts shall be explored and reported. All reports prepared
39 by the investigator shall provide a complete recitation of the facts.

1 (f) An uncorroborated or anonymous allegation shall not be the
2 sole basis for disciplinary action by the department, but may be a
3 basis for an investigation.

4 (g) All reports shall be submitted in a standard format, beginning
5 with a statement of the allegation or complaint, provide all relevant
6 facts, and include the investigator's signature certifying that the
7 investigator has complied with applicable provisions.

8 (h) In addition to its duties specified in subdivision (c), the
9 bureau shall also do all of the following:

10 (1) Upon request by the Governor, the Senate Committee on
11 Rules, or the Speaker of the Assembly, the bureau shall review
12 the policies, practices, and procedures of the department. The
13 bureau may recommend that the Governor, the Senate Committee
14 on Rules, or the Speaker of the Assembly request a review of a
15 specific departmental policy, practice, or procedure that raises a
16 significant issue relevant to the effectiveness of the department.
17 When exigent circumstances of unsafe or life-threatening
18 conditions arise, the bureau may, by whatever means is most
19 expeditious, notify the Governor, the Senate Committee on Rules,
20 or the Speaker of the Assembly.

21 (2) Upon completion of a review, the bureau shall prepare a
22 complete written report that shall be made public. A copy of the
23 report shall be posted on the department's Internet Web site.

24 (3) The bureau shall, during the course of the review, identify
25 areas of full and partial compliance or noncompliance with
26 departmental policies and procedures, specify deficiencies in the
27 completion of documentation of processes, and recommend
28 corrective actions, including, but not limited to, additional training,
29 additional policies, or changes in policies, as well as any other
30 findings or recommendations that the bureau deems appropriate.

31 (4) (A) The bureau shall issue regular reports, no less than
32 annually, to the Governor, the Legislature, and to the DTSC Citizen
33 Oversight Committee established pursuant to Section 25199.21
34 summarizing its recommendations concerning its investigations
35 into allegations of departmental misconduct.

36 (B) The report submitted to the Legislature pursuant to
37 subparagraph (A) shall be submitted in compliance with Section
38 9795 of the Government Code.

39 (C) (i) The report required pursuant to this paragraph shall
40 include, but not be limited to, all of the following:

1 (I) Data on the number, type, and disposition of complaints
2 made against the department.

3 (II) A synopsis of each matter reviewed by the bureau.

4 (III) A summary of the bureau's recommendations regarding
5 the disposition in the case and the level of discipline imposed, and
6 the degree to which the department agrees with the bureau's
7 recommendations regarding the disposition and level of discipline.

8 (IV) The extent to which any discipline was modified after
9 imposition.

10 ~~(i)~~

11 ~~(ii)~~ The report shall be posted on the department's Internet Web
12 site and otherwise made available to the public upon their release
13 to the Governor, the Legislature, and DTSC Citizen Oversight
14 Committee.

15 ~~(ii)~~

16 ~~(iii)~~ The Secretary for Environmental Protection shall appoint
17 the director of the bureau who shall oversee and administer the
18 bureau.

19 25199.21. (a) There is hereby established in the department,
20 the DTSC Citizen Oversight Committee composed of 13 members
21 representing California residents affected by hazardous waste. The
22 committee members shall not include representatives from the
23 department or an entity regulated by the department pursuant to
24 this chapter.

25 (b) Members of the committees shall be appointed as follows:

26 (1) Five members appointed by the Governor.

27 (2) Four members appointed by the Senate Committee on Rules.

28 (3) Four members appointed by the Speaker of the Assembly.

29 (c) Members of the committee shall serve at the pleasure of
30 their appointing authority.

31 (d) The committee shall do all of the following:

32 (1) Receive allegations of departmental misconduct from
33 members of the public.

34 (2) Refer allegation of misconduct to the Criminal Investigation
35 Division of the California Environmental Protection Agency or
36 the bureau, as appropriate.

37 (3) Make recommendations for changes in policies, procedures,
38 and standards of the department to increase public participation
39 in, and the transparency of, the department's decisionmaking
40 process.

1 (4) Serve as a resource and liaison for communities and residents
2 in communication with the department.

3 (5) Review and make public any reports received from the
4 bureau.

5 (e) The department shall not direct or influence, or attempt to
6 direct or influence, the operation of the committee.

7 (f) The department shall provide the committee with appropriate
8 per diem compensation consistent with Section 19822.5 of the
9 Government Code.

10 25199.23. Any information exempted from public disclosure
11 pursuant to the California Public Records Act (Chapter 3.5
12 (commencing with Section 6250) of Division 7 of Title 1 of the
13 Government Code) or any other law shall not be disclosed to the
14 public in a report or other document required by this article to be
15 made public.

16 SEC. 5. Section 25200 of the Health and Safety Code is
17 amended to read:

18 25200. (a) The department shall issue hazardous waste
19 facilities permits to use and operate one or more hazardous waste
20 management units at a facility that in the judgment of the
21 department meet the building standards published in the State
22 Building Standards Code relating to hazardous waste facilities and
23 the other standards and requirements adopted pursuant to this
24 chapter. The department shall impose conditions on each hazardous
25 waste facilities permit specifying the types of hazardous wastes
26 that may be accepted for transfer, storage, treatment, or disposal.
27 The department may impose any other conditions on a hazardous
28 waste facilities permit that are consistent with the intent of this
29 chapter.

30 (b) The department may impose, as a condition of a hazardous
31 waste facilities permit, a requirement that the owner or operator
32 of a hazardous waste facility that receives hazardous waste from
33 more than one producer comply with any order of the director that
34 prohibits the facility operator from refusing to accept a hazardous
35 waste based on geographical origin that is authorized to be accepted
36 and may be accepted by the facility without extraordinary hazard.

37 (c) (1) (A) A hazardous waste facilities permit issued by the
38 department shall be for a fixed term, which shall not exceed 10
39 years for any land disposal facility, storage facility, incinerator,
40 or other treatment facility.

1 (B) The owner or operator of a facility intending to extend the
2 term of the facility's permit shall submit complete Part A and Part
3 B applications for a permit renewal at least two years prior to the
4 expiration date of the permit. Any other relevant information shall
5 be submitted as and when requested by the department.

6 (C) To the extent not inconsistent with the federal act, for an
7 owner or operator in compliance with subparagraph (B), the permit
8 is deemed extended until the renewal application is approved or
9 denied and ~~the owner or operator has exhausted~~ all applicable
10 rights of ~~appeal~~: *appeal have been exhausted*.

11 (D) (i) ~~The department shall approve or deny the application~~
12 *issue a final permit decision* for permit renewal for a facility within
13 36 months following the expiration of the permit's fixed term. An
14 application for permit renewal is deemed denied if the department
15 fails to ~~act~~ *issue a final permit decision* within 36 months following
16 the expiration of the permit's fixed term.

17 (ii) Notwithstanding clause (i), for a facility with a permit that
18 expired on or before January 1, 2015, and for which an application
19 for permit renewal had been submitted before January 1, 2015, the
20 department shall ~~approve or deny~~ *issue a final permit decision* for
21 the application on or before January 1, 2018. An application for
22 permit renewal is deemed denied if the department fails to ~~act~~ *issue*
23 *a final permit decision* on or before January 1, 2018.

24 (iii) *This subparagraph does not apply to applications for*
25 *post-closure permits*.

26 (E) This section does not limit or restrict the department's
27 authority to impose any additional or different conditions on an
28 extended permit that are necessary to protect human health and
29 the environment.

30 (F) In adopting new conditions for an extended permit, the
31 department shall follow the applicable permit modification
32 procedures specified in this chapter and the regulations adopted
33 pursuant to this chapter.

34 (G) When prioritizing pending renewal applications for
35 processing and in determining the need for any new conditions on
36 an extended permit, the department shall consider any input
37 received from the public.

38 (2) The department shall review each hazardous waste facilities
39 permit for a land disposal facility five years after the date of
40 issuance or reissuance, and shall modify the permit, as necessary,

1 to ~~assure~~ *ensure* that the facility continues to comply with the
2 currently applicable requirements of this chapter and the regulations
3 adopted pursuant to this chapter.

4 (3) This subdivision does not prohibit the department from
5 reviewing, modifying, or revoking a permit at any time during its
6 term.

7 (d) (1) When reviewing ~~any~~ *an* application for a permit renewal,
8 the department shall consider improvements in the state of control
9 and measurement technology as well as changes in applicable
10 regulations.

11 (2) Each permit issued or renewed under this section shall
12 contain the terms and conditions that the department determines
13 necessary to protect human health and the environment.

14 (e) A permit issued pursuant to the federal act by the
15 Environmental Protection Agency in the state for which no state
16 hazardous waste facilities permit has been issued shall be deemed
17 to be a state permit enforceable by the department until a state
18 permit is issued. In addition to complying with the terms and
19 conditions specified in a federal permit deemed to be a state permit
20 pursuant to this section, an owner or operator who holds that permit
21 shall comply with the requirements of this chapter and the
22 regulations adopted by the department to implement this chapter.

23 SEC. 6. Section 25200.1 of the Health and Safety Code is
24 amended to read:

25 25200.1. (a) Notwithstanding Section 25200, the department
26 shall not issue a hazardous waste facility permit to a facility which
27 commences operation on or after January 1, 1987, unless the
28 department determines that the facility operator is in compliance
29 with regulations adopted by the department pursuant to this chapter
30 requiring that the operator provide financial assurance that the
31 operator can respond adequately to damage claims arising out of
32 the operation of the facility or the facility is exempt from these
33 financial assurance requirements pursuant to this chapter or the
34 regulations adopted by the department to implement this chapter.

35 (b) (1) On or before January 1, 2016, the department shall adopt
36 regulations requiring a financial bond or other security with respect
37 to the nature and scope of the activity authorized and with respect
38 to any potential risk or injury to human health or the environment
39 from a person or entity that applies for a hazardous waste facilities
40 permit pursuant to this article.

(2) The department shall determine the manner in which, and the condition under which, any security that is deposited pursuant to regulations adopted pursuant to this subdivision may be forfeited or returned, in whole or in part.

(3) Regulations adopted pursuant to this subdivision do not apply to governmental entities.

SEC. 7. Section 25200.20 is added to the Health and Safety Code, to read:

25200.20. Interim status granted for a facility pursuant to Section 25200.5 on or after January 1, 2015, shall terminate five years from the date the interim status is granted or on the date the department takes final action on the application for a hazardous waste facilities permit, whichever is earlier.

SEC. 8. Section 25200.21 is added to the Health and Safety Code, to read:

25200.21. On or before January 1, 2016, the department shall adopt regulations establishing additional criteria that the department shall use to determine whether to issue a new permit or a renewal of a permit pursuant to this article. These criteria shall include, but are not limited to, all of the following:

(a) Number and types of past violations that will result in a denial.

(b) The vulnerability of, and existing health risks to, nearby populations. Vulnerability shall be assessed using the CalEnviroScreen tool, local and regional health risk assessments, the region's federal Clean Air Act attainment status, and other indicators of community vulnerability, cumulative impact, and potential risks to health and well being.

(c) Minimum setback distances from sensitive receptors, such as schools, childcare facilities, residences, hospitals, elder care facilities, and other sensitive locations.

(d) Certification, supported by substantial evidence, by the owner or operator that the facility sought to be permitted uses the least hazardous materials, production formulations, and production processes reasonably available, when appropriate.

(e) Certified by substantial evidence by the owner or operator that it has employed all technically feasible, economically practicable source reduction, as defined in Section 25244.14, when appropriate.

1 (f) Evidence of financial responsibility, qualifications of
2 ownership, and continuity of ownership and operation.

3 (g) Provision of financial assurances pursuant to Section
4 25200.1.

5 (h) Training of personnel, safety culture and plans, emergency
6 plans, and maintenance of operations.

7 (i) Consistent compliance with established standards.

8 SEC. 9. Section 25200.22 is added to the Health and Safety
9 Code, to read:

10 25200.22. The department shall provide a public notice and
11 comment period before the preparation and adoption of a draft
12 permit. The department shall consider and respond to all public
13 comments received before preparing and adopting a draft permit.

O